No. 03-718

Supreme Court, U.S.
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In The
Supreme Court of the United States

CHARLES DESMOND TUCKER,

Petitioner,

v.

FRANK EDWARD FEARN and
JUDY FEARN

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

Pursuant to Supreme Court Rule 15.6, the Petitioner, Charles Desmond Tucker, respectfully submits this Reply to Respondent's Brief in Opposition ["Op. Cert."].

ARGUMENT

Petitioner will not reply to Respondents' lengthy discussion (Op. Cert. 2-9) on the merits of the Question Presented to this Court. There will be additional opportunities for that, should the Court in the wise exercise of its discretion decide to grant review here. Nor is there any need to comment further on the manifest split in the circuits on the issue raised here, Respondents having conceded (Op. Cert. 5-6) that the decision below is in conflict with the jurisprudence of at least one other court of appeal. Lastly, Respondents appear to agree with Petitioner (Op. Cert. 2-3, 6-9) that this case arises as the natural consequence of this Court's previous rulings in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970); *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974); *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990); and *Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811 (2001).

1. Petitioner cannot let go unremarked, however, Respondents' suggestion (Op. Cert. 9) that the issue presented here is confined to the unique circumstances of this case, or to the peculiar interplay between the general maritime law and Alabama's wrongful death statute. It is true that the denial of Petitioners' general maritime law claim for loss of society

damages has particularly detrimental effects here. That is because Alabama's wrongful death statute has been found, by at least one federal court, see *In Re Amtrak "Sunset Limited" Train Crash*, 121 F.3d 1421 (11th Cir. 1997), to be preempted by the general maritime law. But putting aside the point that loss of society damages for deaths occurring on Alabama's state waters were eliminated as a matter of federal preemption (thus at least implicating the Question Presented here), Alabama would be hardly "unique," Op. Cert. 9, in denying recovery for that class of non-pecuniary damages. See *Mahoney v. Lensink*, 550 A.2d 1088 (Conn. App. 1988); *Siciliano v. Capitol City Shows, Inc.*, 475 A.2d 19 (N.H. 1984); *Wilson v. Wylie*, 518 P.2d 1213 (N.M. App. 1973).

In any event, the sweeping denial of loss of society damages under the general maritime law to the non-dependent parents of non-seamen killed in state territorial waters (and thus beyond the scope of the Death on the High Seas Act, 46 U.S.C. § 761) potentially impacts thousands of recreational boaters and non-recreational mariners (not otherwise falling within the class of seamen under the Jones Act, 46 U.S.C. § 688, or under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.) on state navigable waters around the nation. The rule enunciated by the court below would deny loss of society damages to the families of *any* non-seamen killed in state waters. It hardly matters whether parallel state law remedies would grant recovery for such damages or not. Indeed, the fact that the vast majority of states *do* provide for such loss of society damages for the parents on non-dependent minors, counsels in favor of an equivalent remedy under the general maritime law. That Alabama denies such a remedy merely accentuates the incongruity and irrationality of the result reached below.

2. Nor can it be regarded as credible Respondents' assertion, Op. Cert. 8, that petitioners seek to overturn this Court's ruling in *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996). Petitioner is of course mindful of the parallel set of remedies available under the general maritime law and under state tort law (including wrongful death statutes) where a non-mariner is killed in state waters. But this Court's decision in *Yamaha* was narrowly drawn as not to work a reverse-preemption of state law remedies over those afforded by the general maritime law. See id. at 211 n.8 ("We attempt no grand synthesis or reconciliation of our precedent today, but confine our inquiry to the modest question whether it was *Moragne*' design to terminate recourse to state remedies when nonseafarers meet death in territorial waters.").

Obviously, in the event the Court grants review here, the parties will join issue on the extent to which uniformity of the maritime law requires the availability of loss of society damages for the deaths of non-dependent minors who are not seamen, even where state tort law does not provide such a remedy. Suffice it to say here that but for the Eleventh Circuit's erroneous holdings in the case below loss of society damages for the deaths of non-dependent minors on state territorial waters would be recognized under the general maritime law.

CONCLUSION

For the foregoing reasons, along with those earlier presented, the Petition should be granted.

Respectfully submitted,

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